

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PRIVACY INTERNATIONAL, AMERICAN CIVIL
LIBERTIES UNION, AMERICAN CIVIL
LIBERTIES UNION FOUNDATION; and
CIVIL LIBERTIES AND TRANSPARENCY CLINIC,

Plaintiffs,

v.

18-CV-1488

FEDERAL BUREAU OF INVESTIGATION, et al.

Defendants.

JOINT STATUS REPORT

Pursuant to the Text Order of United States Magistrate Judge Hugh B. Scott dated January 31, 2020, plaintiffs Privacy International, American Civil Liberties Union, American Civil Liberties Union Foundation and Civil Liberties & Transparency Clinic, and defendants Federal Bureau of Investigation (“FBI”), Drug Enforcement Administration (“DEA”), Department of Justice Criminal Division, U.S. Immigration and Customs Enforcement (“ICE”), U.S. Customs and Border Protection (“CBP”), Internal Revenue Service (“IRS”), U.S. Secret Service (“USSS”), Department of Justice Office of Inspector General (“DOJ-OIG”), Department of Homeland Security Office of the Inspector General (“DHS-OIG”), Department of Treasury Office of the Inspector General (“Treasury-OIG”) and Treasury Inspector General for Tax Administration (“TIGTA”) hereby file this joint status report.

In this action, plaintiffs seek to compel the production of records under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). This status report describes the current status of defendants’ searches and their review and production of records.¹

1. TIGTA, DHS-OIG, Treasury-OIG and CBP: As explained in defendants’ Status Report dated September 10, 2019, four defendants – TIGTA, DHS-OIG, Treasury-OIG and CBP– have completed their searches and found no responsive records. *See* ECF No. 22 ¶¶ 15.g. & 16. Plaintiffs requested these agencies provide information of the nature of their searches. Pursuant to that request, TIGTA, DHS-OIG, and Treasury-OIG provided plaintiffs with descriptions of their searches on September 3, 2019, and CBP provided plaintiffs a description of its search on December 13, 2019. Based on those descriptions, plaintiffs have determined that they will not challenge the adequacy of the searches. *See* Joint Status Report dated Jan. 31, 2020, ECF No. 32 ¶ 1.

2. IRS, ICE, USSS, and DEA: As explained in prior Joint Status Report, four defendants – IRS, ICE, USSS, and DEA -- have completed their searches and productions in accordance with the interpretation and parameters set forth in defendants’ July 12, 2019 letter to plaintiffs. *See* ECF No. 32 ¶¶ 2-5. Plaintiffs are reviewing the records and the indices and/or explanation for the redactions. *Id.* If plaintiffs determine that they would like to challenge withholdings, redactions, or other aspects of these defendants’ responses, they will confer with defendants regarding a schedule for summary judgment briefing and submit any proposal to the Court in a subsequent status report. *Id.*

¹ Defendants’ prior Status Report describes the background regarding plaintiffs’ FOIA requests and the efforts by the parties to clarify and narrow the scope of plaintiffs’ requests. *See* ECF No. 22.

3. Criminal Division: The Criminal Division has completed its search for potentially responsive records and currently is in the process of reviewing and processing those records. As explained in the prior Joint Status Report, the Criminal Division proposes to process 500 pages of potentially responsive pages per month and produce to plaintiffs any responsive, non-exempt records on a rolling basis. ECF No. 28 ¶ 6. Since the filing of the last Joint Status Report, the Criminal Division has made three additional monthly productions – one on May 15, 2020, one on June 16, 2020 and another on July 16, 2020.

4. DOJ-OIG: DOJ-OIG completed its search for all responsive, non-exempt material. As explained in the last Joint Status Report, on March 6, 2020, DOJ-OIG sent plaintiffs' counsel a letter producing 47 pages with portions of the records withheld pursuant to Exemptions 6, 7C, and/or 7E. ECF No. 37 ¶ 4.² In the letter, DOJ-OIG also explained that it located (1) twenty-one documents consisting of approximately 150 pages that originated with the FBI and (2) one document consisting of approximately 22 pages that originated with the Office of the Attorney General. *Id.* Pursuant to 28 C.F.R. § 16.4, DOJ-OIG referred these documents to the FBI and to the DOJ Office of Information Policy (for the Office of the Attorney General) for processing and direct response. *Id.*

5. FBI: As explained in the prior Joint Status Report and the declaration attached thereto, the Record/ Information Dissemination Section (RIDS) of the FBI temporarily halted its FOIA program in response to the COVID-19 pandemic on March 17, 2020, and returned at a very limited capacity on April 29, 2020. ECF No. 37 ¶ 5. Since then, the FBI has made three productions: one on May 28, 2020, one on June 30, 2020, and another one on July 30, 2020. It expects to make three additional monthly responses (August, September, and October) with a final response (with the possible exception of any records referred to other agencies for

² DOJ-OIG also noted that it had sent portions of four of the 47 pages that contained information of substantial interest to the FBI for consultation. DOJ-OIG will inform plaintiffs of the results following this consultation.

consultation) by October 31, 2020. This would include the records referred to FBI by the DOJ-OIG for a direct response. See ECF No. 37 ¶ 4. RIDS resumed full staffing on June 8, 2020. While RIDS will make its best efforts to meet increased production goals, this increased production rate may be negatively impacted by COVID-19 workplace disruptions or by Bureau operational necessity if RIDS personnel are assigned in support of FBI law enforcement efforts in response to issues arising out of or related to nationwide civil unrest. RIDS anticipates returning to its standard monthly processing rate of 500 PPM in July, subject to the referenced circumstances that may negatively impact productivity.

6. As indicated in their Joint Status Report on January 31, 2020 (ECF No. 32 ¶ 9), the parties proposed that they file quarterly status reports hereafter. The next quarterly report to be filed on October 31, 2020. As part of the next proposed status report, one or both parties may propose further orders regarding the management and scheduling of this case.

Dated: July 30, 2020

Respectfully submitted,

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